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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GYOZO BAKI

Appeal 2009-006250
Application 09/744,035
Technology Center 3700

Decided: March 25, 2010

Before: WILLIAM F. PATE III, MICHAEL W. O'NEILL and
FRED A. SILVERBERG, *Administrative Patent Judges*.

PATE III, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

This is an appeal from the final rejection of claims 5-15.¹ These are the only claims remaining in the application. We have jurisdiction under 35 U.S.C. §§ 134 and 6.

The claimed subject matter is directed to a cartridge valve typically used as a lavatory or sink fixture with a single handle control and cold and warm water mixing capabilities. Appellant's invention is characterized by a valve with an insertion piece that can be of three different configurations to allow three different functions in the claimed cartridge valve.

Claim 8, reproduced below, is further illustrative of the claimed subject matter:

8. Valve battery cartridge used for mixing cold water and warm water, comprises two discs (5,6) arranged one above the other to form a plane sealing together, wherein the lower disc (6) is a stationary inlet disc and the upper disc (5) is a control disc which is displaceable and rotatable on the inlet disc; where the control disc (5) is in mechanical connection with a driving arm (1) pivoted in a lever holder (2) through a ceramic moving element (4), the lever holder (2) is rotatably arranged in a cartridge casing (3), the base (9) of the cartridge casing (3) is formed with a connection element (14) for selectively receiving different interchangeable insertion pieces (10) selected from at least three insertion pieces, wherein an opening for receiving any of the interchangeable insertion pieces in the connection element is formed in a direction which is substantially parallel with a longitudinal axis of the cartridge, wherein the connection element (14) in the base (9) of the cartridge casing (3) receives any of the selected interchangeable insertion pieces (10) which enables connection between connection ducts (13) in a valve battery body (12) and inlet openings, and wherein a longitudinal axis of all of the interchangeable insertion pieces is substantially parallel to the longitudinal axis of the selected cartridge in the base (9) and the base (9) is provided with seal means (11) insulating the connection element from an inner space of the valve battery body (12).

¹ We note the prior appeal of claim 5, App. No. 2004-0666, decision mailed May 26, 2004.

REFERENCES

The references of record relied upon by the Examiner as evidence of anticipation and obviousness are:

Knapp	US 4,804,011	Feb. 14, 1989
Martin	US 5,806,552	Sep 15, 1998
Orlandi '416	EP 0 684 416 A1	Nov. 29, 1995
Orlandi '980	EP 0 771 980 A1	May 7, 1997

Claims 5-8 stand rejected under 35 U.S.C. § 103 as unpatentable over Martin in view of admitted prior art found on page 1 of Appellant's Specification.

Claims 5-11 and 13 stand rejected under 35 U.S.C. § 103 as unpatentable over Martin in view of Appellant's admitted prior art and Knapp.

Claims 5-10 stand rejected under 35 U.S.C. § 102 as anticipated by Orlandi '416.

Claims 12, 14, and 15 stand rejected under 35 U.S.C. § 103 as unpatentable over Martin in view of Appellant's admitted prior art and Orlandi '980.

OPINION

All of Appellant's claims are directed to an insertion piece receiving a replaceable insert selected from at least three different replaceable inserts of different functions. As far as we can determine, none of the references show an insertion piece coupled with three differing inserts.

Martin discloses an adaptor gasket 50 with a removable seal 80 generally of snowman configuration. See col. 4, ll. 30-44 and col. 4, ll. 4-23). In order to reverse the hot and cold water inlets to the cartridge of Martin, seal 80 is removed from cavity 54 and rotated 180 degrees or turned over and replaced into the cavity 54 as shown in Figures 5A and 5B. Thus, giving the Examiner the benefit of the doubt, and considering the rotated seal 80 as two different seals, since it has two different functions, we note that Martin only discloses two differing seals rather than the three insertion pieces required by the claims.

Knapp discloses using a so-called bottom on the lower portion of a cartridge so that a standard cartridge can support different kinds of mixing valves or different installation conditions. See col. 1, ll. 47-50 and ll. 55-60. Knapp further discloses that the cartridge can be supplied with its own standard bottom, that is most frequently used, or that the standard bottom may be removed and remounted into a different position or replaced by a different bottom. See col. 2, ll. 26-32. Figure 1 of Knapp shows a bottom that can be mounted in different positions according to the necessities of the installation. See col. 3, ll. 36-38 and ll. 63-67. While Knapp discloses a bottom that can be placed in different positions and refers generally to different bottoms, it is unclear exactly how many bottoms Knapp contemplates, and it is unclear whether there are, indeed, three different bottoms associated with the Knapp disclosure. As far as we can determine,

Knapp specifically mentions one bottom that can be installed in two different positions and at least one other bottom. Furthermore, we agree with the Appellant's argument that the fixed valve plate 15 of hard material that cooperates with the moveable valve plate 14 is part of the bottom assembly. Therefore, the entire valve must be disassembled in order to change the function of the valve. This is in contrast to Appellant's claims in which only an insertion piece may be removed and replaced without requiring disassembly of the claimed cartridge. Accordingly, it is our conclusion that the claimed subject matter is not *prima facie* obvious from a combination of Martin and the admitted prior art, or Martin and Knapp in view of the admitted prior art. Therefore, these § 103 rejections are reversed.

Turning to the § 102 rejection based on the Orlandi '416 published application, we do not find therein any structure which corresponds to Appellant's three differing inserts. The Examiner points to the bottom 12 in the various embodiments. However, it is unclear that these bottoms are exchangeable on the valve bodies of Orlandi '416. In this case, it appears that the rejection is based on speculation, as it does not appear to be based on the written disclosure in Orlandi '416.

Finally, with respect to the rejection of claims 12, 14 and 15, rejected as unpatentable over Martin in view of the admitted prior art and Orlandi '980, Orlandi '980 has been cited merely to show a pressure regulating insert. However, as noted above, we are not convinced that Martin clearly discloses three differing inserts for an insertion element at the base of a cartridge. Therefore, even if the teachings of Martin were combined with

Orlandi '980, the combined disclosures would not ameliorate the problems that we have discussed with the respect to the Martin reference.

In summary, while the Examiner has proffered a claim construction that three different inserts refers to three discreet pieces which are not necessarily differing in structure or function, we believe that the proper construction of the term as it appears in Appellant's claims is of inserts of three different structures or functions. This is the manner in which we have construed Appellant's claims and the manner in which we have applied the prior art. Based on this proper claim construction, the Examiner's decision to reject the claims under § 102 and § 103 of the statute are reversed.

REVERSED

JRG

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